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HOUSE BILL 157

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Al Park

AN ACT

RELATING TO UNFAIR PRACTICES; PROVIDING FOR A PRIVATE RIGHT OF ACTION UNDER THE UNFAIR PRACTICES ACT FOR ANY UNFAIR OR DECEPTIVE TRADE PRACTICE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 57-12-10 NMSA 1978 (being Laws 1967, Chapter 268, Section 8, as amended) is amended to read:

"57-12-10. PRIVATE REMEDIES.--

A. A person likely to be damaged by an unfair or deceptive trade practice or by an unconscionable trade practice of another may be granted an injunction against it under the principles of equity and on terms that the court considers reasonable. Proof of monetary damage, loss of profits or intent to deceive or take unfair advantage of ~~any~~ a person is not required. Relief granted for the copying of an article

underscored material = new
[bracketed material] = delete

1 shall be limited as to the prevention of confusion or
2 misunderstanding as to source.

3 B. Any person who suffers [~~any~~] loss of money or
4 property, real or personal, as a result of [~~any~~] employment by
5 another person of a method, act or practice that is an unfair
6 or deceptive trade practice or is declared unlawful by the
7 Unfair Practices Act may bring an action to recover actual
8 damages or the sum of one hundred dollars (\$100), whichever is
9 greater. Where the trier of fact finds that the party charged
10 with an unfair or deceptive trade practice or an unconscionable
11 trade practice has willfully engaged in the trade practice, the
12 court may award up to three times actual damages or three
13 hundred dollars (\$300), whichever is greater, to the party
14 complaining of the practice.

15 C. The court shall award attorney fees and costs to
16 the party complaining of an unfair or deceptive trade practice
17 or unconscionable trade practice if the party prevails. The
18 court shall award attorney fees and costs to the party charged
19 with an unfair or deceptive trade practice or an unconscionable
20 trade practice if it finds that the party complaining of such
21 trade practice brought an action that was groundless.

22 D. The relief provided in this section is in
23 addition to remedies otherwise available against the same
24 conduct under the common law or other statutes of this state.

25 E. In [~~any~~] a class action filed under this

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1 section, the court may award damages to the named plaintiffs as
2 provided in Subsection B of this section and may award members
3 of the class such actual damages as were suffered by each
4 member of the class as a result of the unlawful method, act or
5 practice.

6 F. A party to a court action for a private remedy
7 pursuant to this section may request in writing during the
8 thirty-day period following service of the summons and
9 complaint on all parties named in the action that the parties
10 attempt to settle the claim in early mediation. If a request
11 for mediation is made, the parties shall choose a mutually
12 acceptable mediator and enter into mediation within sixty days
13 of the appointment of an acceptable mediator unless otherwise
14 agreed by the parties. A request for mediation may be
15 rescinded at any time if agreed to by all parties.

16 G. If the parties do not agree on a mutually
17 acceptable mediator, the court shall appoint the mediator. If
18 the early mediation pursuant to this section is entered into
19 within sixty days following the appointment of the mediator,
20 the parties suing on the basis of unfair, deceptive or
21 unconscionable trade practices or acts under the Unfair
22 Practices Act shall be required to pay no more than fifty
23 dollars (\$50.00) toward the cost of the mediation and the other
24 party shall pay the remainder of such cost, unless otherwise
25 agreed by the parties. If a person is seeking injunctive

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1 relief in accordance with Subsection A of this section, the
2 person may pursue the claim for injunctive relief without
3 following the mediation requirements of this subsection and
4 Subsection F of this section."

5 Section 2. EFFECTIVE DATE.--The effective date of the
6 provisions of this act is July 1, 2009.

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